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SUPREME COURT, U.S.

TRANSCRIPT-OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 500 / 9

UNITED STATES OF AMERICA, PETITIONER,

VS.

THE CHESAPEAKE & OHIO RAILWAY COMPANY

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

PETITION FOR CERTIORARI FILED DECEMBER 9, 1955

CERTIORARI GRANTED JANUARY 23, 1956

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 560

UNITED STATES OF AMERICA, PETITIONER,

vs.

THE CHESAPEAKE & OHIO RAILWAY COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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[Caption omitted]

In the District Court of the United States for the Eastern District of Virginia, Sitting as a Court of Claims

Civil Action No. 1477

[File endorsement omitted]

THE CHESAPEAKE AND OHIO RAILWAY COMPANY, A CORPORATION,
PLAINTIFF

v.

UNITED STATES, DEFENDANT

COMPLAINT—Filed March 10, 1952

To: The District Court of the United States for the Eastern District of Virginia Sitting as a Court of Claims

1. Plaintiff is a corporation organized and existing under and by virtue of the laws of the State of Virginia, with its principal office in the City of Richmond, within the Eastern District of Virginia, and is and for many years has been, including the time hereinafter stated, a common carrier of passengers and freight in interstate and intrastate commerce, and jurisdiction of this matter against the United States, defendant, arises under the Act of Congress commonly known as the Tucker Act, 28 U.S.C.A. 41 (20).

2. Defendant owes the plaintiff the sum of \$9,657.69, with interest, for unpaid transportation charges due under applicable published schedules, classifications and tariffs on file with the Interstate Commerce Commission and the State Corporation Commission of Virginia, on various shipments transported for the United States, in accordance with the Account attached hereto.

WHEREFORE, plaintiff demands judgment against the defendant for the said sum of \$9,657.69, with interests and costs.

THE CHESAPEAKE AND OHIO RAILWAY COMPANY,
By: Meade T. Spicer, Jr., Attorney,

Address: 1103 Mutual Bldg.,
Richmond 19, Va.

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EXHIBIT TO COMPLAINT-ACCOUNT

THE CHESAPEAKE AND OHIO RAILWAY COMPANY (CHESAPEAKE DISTRICT)

CLAIM OF THE CHESAPEAKE AND OHIO RAILWAY COMPANY VERSUS THE UNITED STATES GOVERNMENT FOR UNPAID TRANSPORTATION CHARGES IN THE AMOUNT OF \$9,657.69 DUE ON ITS BILLS 2-39557-6/46, 2-39994-6/46, 2-40294-7/46, 2-40515-7/46, 2-40527-7/46, 2-40677-7/46, 2-40729-7/46, 2-40781-7/46, 2-40784-7/46, 2-40786-7/46, 2-40791-7/46, 2-40852-7/46, 2-40853-7/46, 2-40863-7/46, 2-28445-5/42, 2-28735-5/42, 2-28737-5/42, 2-28745-5/42, 2-28746-5/42, 2-32745-8/42, 2-33924-9/42, 2-52378-6/43, 2-52864-6/43, 2-53147-6/43, 2-53148-6/43 and 2-53660-6/43 COVERING SHIPMENTS DETAILED BELOW AND IN THE ACCOMPANYING STATEMENT IDENTIFIED AS EXHIBIT "A"

Amount due Plaintiff on its bills in Exhibit "A"

Paid by Government check on 10/25/47 bill 2-40515-7/46

Paid by Government check on 9/22/50 bill 2-40515-7/46

Paid by Government check on 2/20/47 bill 2-40527-7/46

Paid by Government check on 10/26/47 bill 2-40677-7/46

Paid by Government check on 8/31/46 bill 2-40863-7/46

269.27

\$11,208.56

11.87

30.56

118.20

22.53

452.43

Amount deducted by Government because of alleged overpayment of prior bills as per statement below

Subsequent payments made on bill 2-37333-11/42, 3/11/48

Subsequent payments made on bill 2-51192-5/43, 3/16/48

33.98

33.11

10,756.13

67.09

Net amount deducted by Government because of alleged overpayment of prior bills as per statement below

Amount that should have been deducted as per statement below

10,689.04

1,031.35

Balance due Plaintiff as per statement below

\$ 9,657.69

C&O Bill	Date of Delivery	Bill of Lading	Weight	Rate		Correct Charges	Originally Billed and Paid	Overpayment to which Govt. is Entitled	Amount Deducted from C&O Bills, See Exhibit A	Balance Due
				Gross	Net					
Ten carloads of Freight Chassis, Seat Cabs and Bodies K.D. from Pontiac, Mich. to Newport News, Va. covered by waybills 7592 to 7601 Inc. of 12/15/41.										
2-28445-5/42	12/18/41	WQ 4495006	27,300	1.12		305.76				
			4,130	83		34.28				
			27,300	1.12		305.76				
			4,130	83		34.28				
			27,300	1.12		305.76				
			4,130	83		34.28				
			27,300	1.12		305.76				
			4,130	83		34.28				
			30,000	1.12		336.00				
			27,300	1.12		305.76				
			4,130	83		34.28				
			27,300	1.12		305.76				
			4,130	83		34.28				
4			38,340	59		226.21				
2-28445-5/42	12/18/41	WQ 4495006	38,340	59		226.21				
		Unloading & Reloading	38,340	59		226.21				
		"	"	"		53.25				
		"	"	"		53.25				
		"	"	"		43.32				
		"	"	"		21.66				
		Storage	"	"		15.43				
						237.39				
						3,479.17	3,551.20	72.03	1,508.19	1,436.16

C&O Bill	Date of Delivery	Bill of Lading	Weight	Rate		Correct Charges	Originally Billed and Paid	Overpayment to which Govt. is Entitled	Amount Deducted from C&O Bills, See Exhibit A	Balance Due
				Gross	Net					
Ten carloads of Freight Chassis, Seat Cabs and Bodies K.D. from Pontiac, Mich. to Newport News, Va. covered by waybills 9355 to 9364 Inc. of 12/26/41										
2-28735-5/42	12/30/41	WQ 4501673	27,300	1.12		305.76				
			2,065	83		17.14				
			36,400	1.12		407.68				
			27,300	1.12		305.76				
			4,130	83		34.28				
			27,300	1.12		305.76				
			4,130	83		34.28				
			27,300	1.12		305.76				
			4,130	83		34.28				
			27,300	1.12		305.76				
			4,130	83		34.28				
			27,300	1.12		305.76				
			4,130	83		34.28				
			42,600	1.12		477.12				
			38,340	59		226.21				
			40,000	59		236.00				
		Unloading & Reloading				63.48				
		"				53.25				
		"				64.93				
		"				21.66				
		Storage				228.40				
						3,801.83	2,867.72	65.89	1,783.66	1,717.77

5 Ten carloads of Freight Chassis and Seat Cabs K.D. from Pontiac, Mich. to
Newport News, Va. covered by waybills 9978 to 9987 Inc. of 1/2/42

2-28737-5/42	1/ 7/42	WQ 4501676	36,400	1.12	407.68
			36,400	1.12	407.68
			27,300	1.12	305.76
			4,130	83	34.28
			27,300	1.12	305.76
			4,130	83	34.28
			27,300	1.12	305.76
			4,130	83	34.28
			27,300	1.12	305.76
			4,130	83	34.28
			27,300	1.12	305.76
			4,130	83	34.28
			27,300	1.12	305.76
			4,130	83	34.28
			27,300	1.12	305.76
			4,130	83	34.28
			27,300	1.12	305.76
			4,130	83	34.28
			Unloading & Reloading		20.58
			"		53.25
			"		53.25
			Storage		56.08
					204.23

3,923.07	4,018.91	95.84	2,075.17	1,979.33
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C&O Bill	Date of Delivery	Bill of Lading	Weight	Rate		Correct Charges	Originally Billed and Paid	Overpayment to which Govt. is Entitled	Amount Deducted from C&O Bills, See Exhibit A	Balance Due
				Gross	Net					
Ten carloads of Freight Chassis and Seat Cabs from Pontiac, Mich. to Newport News, Va. covered by waybills 10787 to 10796 Inc. of 1/9/42										
2-28745-5/42	1/13/42	WQ 4501685	36,400	1.12		407.68				
			36,400	1.12		407.68				
			27,300	1.12		305.76				
			4,130	.83		34.28				
			27,300	1.12		305.76				
			4,130	.83		34.28				
			27,300	1.12		305.76				
			4,130	.83		34.28				
			27,300	1.12		305.76				
			4,130	.83		34.28				
2-28745-5/42	1/13/42	WQ 4501685	27,300	1.12		305.76				
			4,130	.83		34.28				
			27,300	1.12		305.76				
			4,130	.83		34.28				
			27,300	1.12		305.76				
			4,130	.83		34.28				
			27,300	1.12		305.76				
			4,130	.83		34.28				
			27,300	1.12		305.76				
			4,130	.83		34.28				
		Unloading & Reloading				53.25				
		"				56.08				
		"				56.08				
		Storage				17.75				
						189.35				
						3,908.19	4,004.03	95.84	2,075.17	1,979.83

6

Ten carloads of Freight Chassis, Seat Cabs and Bodies K.D. from Pontiac, Mich.
to Newport News, Va. covered by waybills 10797 to 10806 Inc. of 1/9/42

2-28746-5/42	1/13/42	WQ 4501686	36,400	1.12	407.68
			27,300	1.12	305.76
			4,130	.83	34.28
			27,300	1.12	305.76
			4,130	.83	34.28
			27,300	1.12	305.76
			4,130	.83	34.28
			27,300	1.12	305.76
			4,130	.59	24.37
			40,000	.59	236.00
			38,340	.59	226.21
			40,000	.59	236.00
			38,340	.59	226.21
			40,000	.59	236.00
		Unloading & Reloading			64.98
		"			53.25
		"			61.07
		Storage			20.58
					205.75

CFA 490-A, B.T. Jones ICC 2767

3,323.98	3,381.81	57.83	1,248.47	1,190.64
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Seventeen carloads of Passenger Automobiles (Jeeps) and Freight Trucks from West Carteret, N. J. to Newport News, Va. covered by waybills 2981, 2982, 2984, 2987, 2988, 2990, 2994, 2998, 3005, 3006, 3007, 3009, 3015, 3017, 3021, 3022 and 3049 of May 1943

8	2-52378-6/43	5/31/43	WQ 15367491	27,558	72	198.42
			WQ 15367464	27,558	72	198.42
			WQ 15367455	36,744	72	264.56
			WQ 15367479	36,744	72	264.56
			WQ 15367460	27,558	72	198.42
			WQ 15367456	20,000	57	114.00
			WQ 15367470	40,700	57	231.99
			WQ 15367463	40,700	57	231.99
			WQ 15367459	21,400	57	121.98
			WQ 15367480	40,700	57	231.99
			WQ 15367494	26,280	72	189.22
			WQ 15367725	35,040	72	252.29
			WQ 15367482	26,280	72	189.22
			WQ 15367466	36,744	72	264.56
			WQ 15367468	36,744	72	264.56
			WQ 15367481	36,744	72	264.56
			WQ 15367478	36,744	72	264.56
	2-52378-6/43	6/ 4/43	Storage			10.51
			"			7.88
			"			8.27
			"			11.02
			"			11.02
			"			8.27
			"			7.88
			"			8.27
			"			11.02
			"			11.02
	2-52378-6/43	6/ 2/43				11.02
						11.02
	2-52378-6/43	5/31/43				11.02
						11.02

TL 72-A, W.S. Curletts ICC A-445

3,862.50 3,862.50

549.02

549.02

C&O Bill	Date of Delivery	Bill of Lading	Weight	Rate		Correct Charges	Originally Billed and Paid	Overpayment to which Govt. is Entitled	Amount Deducted from C&O Bills, See Exhibit A	Balance Due
				Gross	Net					
Twenty seven carloads of Freight and Passenger Autos (Jeeps) from West Carteret, N. J. to Newport News, Va. covered by waybills 2977, 3016, 3019, 3030, 3003, 2999, 3014, 2996, 2997, 2992, 2961, 2980, 2937, 3010, 3008, 3004, 2976, 3291, 3307, 3314, 3322, 3321, 3313, 3323, 3308, 3306, 3320, of May 1943 and June 1943										
2-52864-6/43	5/30/43	WQ 15367450	42,210	57			240.60			
	5/31/43	WQ 15367490	35,040	72			252.29			
	6/ 2/43	WQ 15367504	28,400	72			204.48			
		WQ 15367493	36,744	72			264.56			
	5/31/43	WQ 15367483	27,558	72			198.42			
		WQ 15367472	36,744	72			264.56			
		WQ 15367489	36,460	72			262.51			
		WQ 15367474	36,744	72			264.56			
		WQ 15367473	36,744	72			264.56			
		WQ 15367469	38,950	57			222.02			
		WQ 15367436	38,950	57			222.02			
		WQ 15367453	38,950	57			222.02			
9	5/30/43	WQ 15367408	39,110	57			222.93			
2-52864-6/43	5/31/43	WQ 15367488	36,744	72			264.56			
		WQ 15367484	27,558	72			198.42			
		WQ 15367476	36,744	72			264.56			
		WQ 15367448	78,220	57			445.85			
	6/16/43	WQ 15367575	22,000	52			114.40			
		WQ 15367589	22,000	52			114.40			
		WQ 15367600	21,366	52			111.10			
		WQ 15367917	21,366	52			111.10			
		WQ 15367921	21,366	52			111.10			
		WQ 15367599	21,366	52			111.10			
		WQ 15367918	21,366	52			111.10			
		WQ 15367596	21,366	52			111.10			

WQ 15367597	21.366	52	111.10
WQ 15367590	21.366	52	111.10
Storage			7.05
"			11.02
"			11.69
"			11.69
"			12.66
"			23.47
"			11.73
"			11.69
"			11.02
"			10.51
"			8.27
"			8.27
"			11.02
"			10.94
"			11.02
"			11.02

TL 72-A, W.S. Curletts ICC A-445

5,579.59 5,579.59

563.25

563.25

Eighteen carloads of Freight and Passengers Automobiles (Jeeps) from West Carteret, N. J. to Newport News, Va. covered by waybills 2970, 2974, 2964, 2940, 2978, 2986, 2995, 2971, 2975, 2968, 3000, 2993, 3060, 2969, 2947, 2954, 2948, 3316 of May 1943 and June 1943

2-53147-6/43 5/30/43

WQ 15367445	39.010	57
WQ 15367449	39.010	57

222.35
222.36

C&O Bill	Date of Delivery	Bill of Lading	Weight	Rate		Correct Charges	Originally Billed and Paid	Overpayment to which Govt. i Entitleds	Amount Deducted from C&O Bills, See Exhibit A	Balance Due
				Gross	Net					
2-53147-6/43	5/30/43	WQ 15367425	39,170	57		223.27				
10		WQ 15367413	40,000	57		228.00				
		WQ 15367452	39,110	57		222.93				
	5/31/43	WQ 15367454	38,950	57		222.02				
		WQ 15367461	20,000	57		114.00				
	5/30/43	WQ 15367447	42,210	57		240.59				
		WQ 15367446	39,010	57		222.36				
		WQ 15367444	42,210	57		240.60				
	5/31/43	WQ 15367475	26,744	72		192.56				
	6/ 2/43	WQ 15367471	38,950	57		222.02				
	6/ 4/43	WQ 15367703	36,318	72		261.49				
	5/30/43	WQ 15367441	40,000	57		228.00				
		WQ 15367418	40,700	57		231.99				
		WQ 15367422	40,700	57		231.99				
		WQ 15367416	39,110	57		222.93				
	6/17/43	WQ 15367598	22,000	52		114.40				
		Storage				8.02				
		"				11.73				
		"				12.66				
		"				10.90				
		"				5.84				
		"				11.69				
		"				11.70				
		"				11.69				
		"				12.66				
		"				11.70				
		"				11.70				
		"				11.73				
		"				11.70				
		"				11.73				

12.21
12.21
11.75

TL 72-A W.S. Curletts ICC A-445

4,055.48 4,127.48 72.00 109.60 37.60

11 Five carloads of Freight and Passenger Automobiles (Jeeps) from West Carteret, N. J. to Newport News, Va. covered by waybills 3023, 2983, 3050, 3294 and 3315 of May and June 1943

2-53148-6/43	6/ 2/43	WQ 15367497	26,280	72	189.22
	5/31/43	WQ 15367458	38,950	57	222.02
	6/ 4/43	WQ 15367727	26,280	72	189.22
	6/17/43	WQ 15367576	22,000	52	114.40
		WQ 15367582	22,000	52	114.40
		Storage			7.88
					11.67
					7.88

TL 72-A, W.S. Curletts ICC A-445

856.69 856.69 78.84 78.84

C&O Bill	Date of Delivery	Bill of Lading	Weight	Rate		Correct Charges	Originally Billed and Paid	Overpayment to which Govt. is Entitled	Amount Deducted from C&O Bills, See Exhibit A	Balance Due	
				Gross	Net						
Fifteen carloads of Freight and Passenger Automobiles (Jeeps) from West Carteret, N. J. to Newport News, Va. covered by waybills 3279, 2985, 3067, 2960, 2962, 2966, 2958, 2955, 2929, 2941, 2930, 2959, 2965, 2938, 3312 of May and June 1943. One carload of Freight Trailers from Bayonne, N. J. to Newport News, Va. covered by waybill 6712 of 6/18/43. Four carloads of Gasoline from Port Newark, N. J. to Newport News, Va. covered by waybills 5172, 5173, 5165 and 5180 of 6/6/43											
2-53660-6/43	6/17/43	WQ 15367567	21,366	52		111.10					
	5/31/43	WQ 15367456	21,105	57		120.30					
	6/ 4/43	WQ 15367707	26,280	72		189.22					
	5/30/43	WQ 15367437	40,700	57		231.99					
		WQ 15367435	39,010	57		222.36					
		WQ 15367439	40,700	57		231.99					
		WQ 15367423	40,700	57		231.99					
		WQ 15367420	40,700	57		231.99					
		WQ 15367406	39,110	57		222.93					
		WQ 15367428	39,110	57		222.93					
		WQ 15367411	42,210	57		240.60					
		WQ 15367434	42,210	57		240.60					
		WQ 15367438	42,210	57		240.60					
		WQ 15367409	40,000	57		228.00					
		WQ 15367584	39,060	57		222.64					
		6/22/43	WQ 8037161	22,400	41		91.84				
	12	6/27/43	WQ 14076442	71,395	31		221.32				
			R/C				6.93				
2-53660-6/43		6/22/43	WQ 14076441	74,905	31		232.21				
			R/C				6.93				
		6/22/43	WQ 14076481	89,335	31		276.94				
		R/C				6.93					
	6/23/43	WQ 14076455	72,175	31		223.74					
		R/C				6.93					

12

Storage

"
"
"
"
"
"
"
"
"
"

12.21
10.51
11.70
11.73
11.73
11.73
12.21
12.21
12.21
9.33
12.66
12.66
12.66

TL 72-A, W.S. Curletts ICC A-445

2-33838-9/42
2-34213-9/42
2-39954-1/43
2-42014-2/43
2-52976-6/43
2-53385-6/43

2-40527-7/46 Cleared by Journal Entry 11/10/46

Office of Auditor of Station Accounts and Overcharge Claims
Richmond, Virginia
March 14, 1951

4,416.56	4,416.56		39.42	39.42
Total		532.72	10,190.41	9,657.69
224.10	257.00	32.90	32.90	
1,035.14	1,184.43	149.29	149.29	
963.32	1,130.30	166.98	166.98	
407.48	438.14	30.66	30.66	
191.65	267.41	75.76	75.76	
314.42	357.06	42.64	42.64	
		40	40	
Grand Total		1,031.35	10,689.04	9,657.69

16 U. S. OF AMERICA VS. CHESAPEAKE AND OHIO RAILWAY CO.

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EXHIBIT "A"

DETAIL OF CHESAPEAKE AND OHIO RAILWAY COMPANY BILLS 2-39557 6/46, 2-39994 6/46, 2-40294 7/46, 2-40515 7/46, 2-40527 7/46, 2-40677 7/46, 2-40729 7/46, 2-40781 7/46, 2-40784 7/46, 2-40786 7/46, 2-40791 7/46, 2-40852 7/46, 2-40853 7/46 and 2-40863 7/46 COVERING VARIOUS SHIPMENTS AS DETAILED BELOW

C&O Bill	Date of Delivery	Bill of Lading	Weight	Rate		Charges
				Gross	Net	
2-39557-6/46	5/14/46	WV 8696346 Refg. Charge	48825	57	52942	258.49 48.00
					Total	306.49
2-39994 6/46	6/13/46	WV 8545493	3075	2.62		80.57
2-40294-7/46	6/22/46	WW 1690132	47685	1.35	85695	408.64
2-40515-7/46	6/25/46	WV 9955287	31800	.82	72800	231.50
		Ice	10000	4.35NT		21.75
		Salt	500	.75		3.75
		Swg.				.80
		Ice	6100	4.55NT		13.87
		Salt	305	.75		2.29
		Swg.				.80
		Ice	2000	4.55NT		4.55
		Salt	100	.75		.75
		Swg.				.50
		Ice	1100	4.55NT		2.51
		Salt	55	.75		.41
		Swg.				.80
	6/11/46	WV 8552166	25755	1.05	86491	222.76
	6/ 6/46	WV 9954961	31800	.78	69260	220.25
		Ice	10000	4.35NT		21.75
		Salt	500	.75		3.75
		Swg.				.80
		Ice	5300	4.55NT		12.03
		Salt	265	.75		1.99
		Swg.				.80
		Ice	1000	4.55NT		2.28
		Salt	40	.75		.30
		Swg.				.80
		Ice	1400	4.55NT		3.19
		Salt	70	.75		.53
		Swg.				.80
		Ice	2900	4.55NT		6.60
		Salt	145	.75		1.09
		Swg.				.50
		Ice	1200	4.55NT		2.73
		Salt	60	.75		.45
		Swg.				.50
					Total	788.18
2-40527-7/46	7/ 8/46	WW 111044	24000	48		115.20
	5/21/46	WW 8005074	60152	44		264.67
			4715	48		22.63
			12810	63		80.70
			1700	44		7.48
	7/ 3/46	WW 1690109	24000	13		31.20
		WW 1690110	43400	13		82.42

40527-7/46	7/ 3/46	WW 3411918	45700	39		178.23
		R/C				2.97
	6/11/46	WW 1329227	41280	44		181.63
	7/ 3/46	WW 3419920	48000	39		187.20
		R/C				2.97
	6/18/46	WW 3360877	67340	Var.		195.04
	7/10/46	WW 3199671	48000	41		196.80
	7/ 8/46	WW 1727122	23000	39		93.60
		WW 1727123	24000	39		93.60
	6/29/46	WW 1690089	68163	13		88.61
	6/29/46	WW 1690087	67050	13		83.27
	7/ 9/46	WW 1690140	24000	13		31.20
		WW 1690141	24000	13		31.20
	7/ 4/46	WW 3361787	68094	29		197.47
			105	36		38.
	7/11/46	WW 3570284	20000	49		98.00
	7/12/46	WW 5244145	24000	42		100.80
	7/10/46	WW 592390	55414	1.46		809.04
		10%				80.90
	6/15/46	WW 6288226	100800	21		211.68
	6/25/46	WW 6288656	67760	32		216.83
	6/28/46	WW 6288657	43086	32		137.88
	3/28/46	WW 8084018	38500	19		73.15
		Storage				30.56
					Total	3,927.31
40677-7/46	7/ 5/46	WW 1690127	36375	18		65.48
	7/12/46	WW 696668	618	Mi	09¢ per mile	55.62
	7/16/46	WW 3570298	20000	49		98.00
		WW 649242	35600	62		220.72
			28700	59		169.33
	7/17/46	WW 3570307	20000	49		98.00
		WW 3238678	34400	57		196.08
		WW 3238680	34400	57		196.08
		WW 3238679	32400	57		184.68
		WW 3238681	34400	57		196.08
		WW 3238676	28400	57		161.88
		WW 3238677	32400	57		184.68
		WW 3238682	34400	57		196.08
	7/18/46	WW 3570283	20000	49		98.00
	7/ 6/46	WW 5244142	38880	41		159.41
	7/ 6/46	WW 5244141	24900	37		92.13
	7/ 8/46	WW 649209	32832	36		118.20
	6/27/46	WW 5244135	25000	38		95.00
	7/18/46	WW 4244150	24000	42		100.80
		WW 5244149	24000	42		100.80
					Total	2,787.05
40729-7/46	7/18/46	WW 3570301	20000	49		98.00
	7/19/46	WW 5244148	24000	42		100.80
					Total	198.80
40781-7/46	7/19/46	WW 4580808	78750	36		275.63
40784-7/46	7/16/46	WX 8112001	20897	Var.		299.60
40786-7/46	7/ 5/46	WX 9216913	105200	2.93NT		154.12
	7/ 8/46	WX 9216914	108600	2.93NT		159.10

18 U. S. OF AMERICA VS. CHESAPEAKE AND OHIO RAILWAY CO.

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EXHIBIT "A"

DETAIL OF CHESAPEAKE AND OHIO RAILWAY COMPANY BILLS 2-39557-6/46, 2-39994-6/46, 2-40294-7/46, 2-40515-7/46, 2-40527-7/46, 2-40677-7/46, 2-40729-7/46, 2-40781-7/46, 2-40784-7/46, 2-40786-7/46, 2-40791-7/46, 2-40852-7/46, 2-40853-7/46 and 2-40863-7/46 COVERING VARIOUS SHIPMENTS AS DETAILED BELOW

C&O Bill	Date of Delivery	Bill of Lading	Weight	Rate		Charges
				Gross	Net	
2-40786-7/46	6/14/46	WX 9216910	94500	2.85NT		134.66
	6/17/46	WX 9216907	101100	2.85NT		144.07
	6/19/46	WX 9216907	111100	2.85NT		158.32
	6/21/46	WX 9216909	101000	2.85NT		143.93
	6/24/46	WX 9216911	98300	2.85NT		140.08
	6/25/46	WX 9216912	101400	2.85NT		144.50
					Total	1,178.78
2-40791-7/46	7/12/46	WW 8347408	6483	3.72	2.37232	153.80
	7/19/46	WW 8838333	230	1.53	1.34385	3.09
					Total	156.89
2-40852-7/46	7/22/46	WV 1399167	7057	6.08	3.96959	280.13
	7/22/46	WV 9951095	601	Var.		11.38
	6/1/46	WV 1329509	100	2.26	1.81301	1.81
		Less P.U. and Del.				- 10
					Total	293.22
2-40853-7/46	7/23/46	WV 7333977	82865	16		132.58
		WV 7333999	66403	Var.		109.66
	7/22/46	WV 7333909	25691	Var.		66.80
					Total	309.04
2-40863-7/46	7/22/46	WW 3407177	2892	59		17.06
		WW 3407178	186	59		1.10
		WW 3407300	117	59		.69
		WW 648453	100	1.23		1.23
		Less P.U.				- .05
	6/20/46	WW 3425905	2430	1.08		26.24
		WW 3425906	8973	1.08		96.91
	7/23/46	WW 3238480	216	57		1.23
	7/20/46	WW 1727157	238	Var.		2.23
		WW 3362631	5800	59		34.22
		WW 1715108	880	39		3.43
		WW 3407023	100	1.07		1.07
		WW 3362402	740	75		5.55
	7/22/46	WW 1730776	218	89		1.94
		Less P.U.				- .11
	7/16/46	WW 3406821	601	Var.		5.62
					Total	198.36
					Grand Total	11,208.56

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EXHIBIT "B"

STATEMENT OF SHIPMENTS INCLUDED IN CHESAPEAKE AND OHIO RAILWAY COMPANY BILLS 2-28445-5/42, 2-28735-5/42, 2-28737-5/42, 2-28745-5/42 and 2-28746-5/42 THAT WERE NOT EXPORTED THRU NEWPORT NEWS, VA. BUT WERE RESHIPED TO DESTINATIONS INDICATED

C&O Bill	Bill of Lading	Car	Reshipped to	Bill of Lading
2-28445-5/42	WQ 4495006	EJE 32715	Bloomfield, N. J.	WQ 5230694
		PLE 42459	"	WQ 5230688
		Pmcky 91603	"	WQ 5228683
		B&LE 36233	"	WQ 5228694
		"	"	WQ 5230692
		PLE 41842	"	WQ 5230681
		CN 141509	"	WQ 5228176
		PLE 43213	"	WQ 5230682
		Pa 336547	"	WQ 5228178
		Pa 853343	"	WQ 5220152
		CNJ 85982	"	WQ 6233092
2-28735-5/42	WQ 4501673	CN 141446	"	WQ 6232903
		"	"	WQ 6233094
		BLE 36368	"	WQ 5228683
		NKP 70430	"	WQ 5226814
		"	"	WQ 5226808
		PM 18568	"	WQ 5228148
		PLE 45204	"	WQ 5228165
		"	"	WQ 5226811
		"	"	WQ 5228164
		"	"	WQ 5228173
		"	"	WQ 5228168
		PLE 44711	"	WQ 5227839
		Erie 19463	"	WQ 5226807
		Pa 335160	New Cumberland, Pa.	WQ 5230098
		Pa 823080	"	WQ 6232905
		NKP 70359	"	WQ 6232901
-28737-5/42	WQ 4501676	PM 18702	Bloomfield, N. J.	WQ 5230679
		"	"	WQ 5228176
		Erie 10518	"	WQ 5228175
		GTW 145337	"	WQ 5228179
		"	"	WQ 5228167
		Milw 360827	"	WQ 5230694
		"	"	WQ 5230682
		CBQ 795346	"	WQ 5228162
		CBQ 196205	"	WQ 5228172
		"	"	WQ 5228170
		PM 18590	"	WQ 5230693
		Milw 350034	"	WQ 5230691
		Erie 14544	"	WQ 5228168
		"	"	WQ 5228104
		"	"	WQ 5228175
2-28745-5/42	WQ 4501685	CN 141205	"	WQ 5230688
		UP 57185	"	WQ 5226810
		Pa 810824	"	WQ 5228153
		CNW 72201	"	WQ 5228153
		"	"	WQ 5228167
		CNW 43083	"	WQ 5226817
		"	"	WQ 5227841

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EXHIBIT "B"

STATEMENT OF SHIPMENTS INCLUDED IN CHESAPEAKE AND OHIO RAILWAY COMPANY BILLS 2-28445-5/42, 2-28735-5/42, 2-28737-5/42, 2-28745-5/42 and 2-28746-5/42 THAT WERE NOT EXPORTED THRU NEWPORT NEWS, VA. BUT WERE RESHIPED TO DESTINATIONS INDICATED

C&O Bill	Bill of Lading	Car	Reshipped to	Bill of Lading
		PLE 46983	Bloomfield, N. J.	WQ 5220152
		" "	"	WQ 5228162
		Rdg 21403	"	WQ 5228166
		EJE 80451	"	WQ 5228171
		EJE 80488	"	WQ 5220152
		EJE 80488	"	WQ 5228163
		LV 31498	"	WQ 5228151
		" "	"	WQ 5228170
		LV 31471	"	WQ 5226818
2-28746-5/42	WQ 4501686	Milw 361026	"	WQ 5226809
		WLE 70573	"	WQ 5226812
		Pmcky 91642	"	WQ 5226807
		" "	"	WQ 5227837
		B&O 258104	"	WQ 5227841
		" "	"	WQ 5228739
		Pa 751330	"	WQ 5226802
		StPM&O 88023	"	WQ 5230099
		Pa 854172	"	WQ 5232902
		Rdg 24837	"	WQ 5232901
		Pa 863585	"	WQ 5230099
		PLE 43071	"	WQ 5230100

18-20

AFFIDAVIT

STATE OF VIRGINIA:

City of Richmond, to-wit:

Personally appeared before me, H. K. Hawthorne, Jr., a notary public in and for the City of Richmond, in the State of Virginia, C. E. Weaver, Jr., who made oath in due form of law that he is Auditor of Revenue and Agent of The Chesapeake and Ohio Railway Company, and the Account hereto annexed, in the sum of \$9,657.69 is correct, and is justly due and owing to The Chesapeake and Ohio Railway Company, with interest thereon until paid, to the best of his knowledge, information and belief.

C. E. WEAVER.

Sworn to and subscribed before me, this 10th day of March, 1952.

H. K. HAWTHORNE, JR.,

Notary Public.

My commission expires July 26, 1955.

21 In the District Court of the United States for the Eastern District of Virginia, Sitting as a Court of Claims

[File endorsement omitted]

[Title omitted]

STIPULATION OF COUNSEL—Filed January 23, 1953

It is hereby stipulated and agreed by and between counsel for the respective parties hereto, as follows:

1. That some or all of the claims in this action present the same issues of law and fact as are presented by the case of *The Chesapeake and Ohio Ry. Co. v. United States*, in the District Court of the United States for the Eastern District of Virginia, Civil Action No. 1268.

2. That further proceedings in this action shall be stayed until there is a final judgment in No. 1268, *supra*.

3. That the final judgment in No. 1268, *supra*, shall govern the disposition of the claims involved in this action to the extent that it is applicable.

4. It is understood that the final judgment in No. 1268 refers to the judgment after all rights of appeal have been exhausted, if either party should determine to appeal from any judgment of the District Court in No. 1268.

Dated: _____

MEADE T. SPICER, JR.,

Counsel for Plaintiff.

A. CARTER WHITEHEAD,

United States Attorney.

RICHARD E. LEWIS,

Ass't. United States Attorney.

22 In the United States District Court for the Eastern District
of Virginia, Richmond Division

[File endorsement omitted]

[Title omitted]

ANSWER—Filed March 17, 1954

Comes now the defendant, United States of America, in an answer to the plaintiff's Complaint and admits the allegation contained in Paragraph 1 and admits the allegation contained in Paragraph 2, except that it denies it is indebted to the plaintiff in the amount of \$9,657.69.

WHEREFORE, the defendant, the United States of America, demands judgment in its behalf, together with its costs and expenditures.

L. S. PARSONS, JR.,
United States Attorney,
311 Post Office Building,
Richmond, Virginia.

R. R. RYDER,
Assistant United States Attorney,
311 Post Office Building,
Richmond, Virginia

CERTIFICATE OF MAILING (omitted in Printing)

23 In the United States District Court for the Eastern District
of Virginia, Richmond Division

[File endorsement omitted]

[Title omitted]

ORDER ON PRE-TRIAL CONFERENCE—December 10, 1954

At a pre-trial conference with counsel held at Richmond on December 9, 1954, it was determined and is now ORDERED that:

(1) The motion of the defendant to refer this case to the Interstate Commerce Commission to determine whether the domestic tariff rate involved in this proceeding is reasonable if it should be determined that the shipment involved, or any part thereof, was subsequently exported, is denied.

(2) The question for determination by the Court at the hearing of this case on its merits is whether the ultimate exportation of the

shipment, or any part thereof, results in causing the export tariff rate to Newport News applicable in the instant case for transportation of such shipment, or any part thereof as may have been so exported

(3) In so far as the related cases now pending will be affected thereby the decision of this case will be controlling.

STERLING HUTCHESON,
United States District Judge.

December 10, 1954.

24 In the United States Court for the Eastern District of Virginia, Richmond Division

[File endorsement omitted]

[Title omitted]

STIPULATION OF FACTS—Filed February 10, 1955

Now comes The Chesapeake and Ohio Railway Company, plaintiff, by and through its undersigned attorney of record, and the United States of America, defendant, by and through L. S. Parsons, Jr., United States Attorney for the Eastern District of Virginia, and hereby stipulate that the following facts are to be taken as true and correct in this action, without prejudice to objection to materiality and relevancy, and under the best evidence rule.

1. The plaintiff is a corporation organized and existing under the laws of the State of Virginia and is a common carrier by railroad, operating in interstate commerce, and connects with, and performs through services in conjunction with, other such common carriers by railroad who participated in the through transportation services involved in this case.

2. This is an action under the Tucker Act for the collection of balances of transportation charges on various shipments transported by the plaintiff for the defendant. Included in the Account or Schedule of Charges annexed to the plaintiff's Bill of Complaint, are Line-haul Freight Charges which accrued on fifty car-load shipments of Freight Chassis, Seat Cabs and Bodies, consigned and transported on government bills of lading from Pontiac,

25 Michigan, to Newport News, Virginia, on various dates in the period from December 10, 1941, through January 31, 1942, under applicable tariffs and classifications in effect, and delivered to the consignee at Newport News, Virginia, and unloaded on a pier controlled by the government.

3. The said shipments were made in good faith by the Government, with the intention that the articles therein would be exported

from Newport News to the Republic of China, pursuant to the Lend-Lease Act of March 11, 1941, by way of the port of Rangoon, Burma. Except for the fall of Rangoon to the Japanese military forces on March 8, 1942, the shipments would have been exported accordingly.

4. Defendant now offers to present evidence alleged to show the facts set forth in the attached photostat, Exhibit 1.

5. At the time the shipments were consigned and transported from Pontiac, Michigan to Newport News, Virginia, there was on file with the Interstate Commerce Commission and in effect, Central Freight Tariff No. 218-M, attached hereto as Exhibit 2 to this Stipulation of Facts.

6. The plaintiff, as delivering carrier at Newport News, Virginia, rendered bills for the line-haul transportation charges from Pontiac, Michigan, to Newport News, and said bills were paid initially by Army disbursing officers in substantially the amounts billed, such charges being computed by the use of the established domestic freight rates published in Central Freight Tariff No. 190-A, on file with the Interstate Commerce Commission and in effect. Upon subsequent audit of the payment vouchers, the General Accounting Office of defendant several years thereafter, recovered back from the plaintiff, the difference between such sums and the lesser sums calculated respectively, by said office, at the existing export freight tariff rates, by making deductions from amounts otherwise due to

the plaintiff by the defendant, on other bills for other and different transportation services performed, by virtue of
26 Title 49 U. S. Code, Annotated, Section 66.

7. The question for determination is, whether the published domestic freight tariff rates between Pontiac, Michigan, and Newport News, Virginia, are properly applicable to the shipments involved, or whether the lower export tariff rates are applicable thereto.

8. The title page of said Central Freight Tariff No. 218-M, and pages 81, 331, 333, 334 and 362 thereof are attached hereto as "Exhibit A" to this Stipulation of Facts.

Agreed:

R. R. RYDER,

Assistant United States Attorney.

Agreed:

MEADE T. SPICER, JR.,

Counsel for Plaintiff.

February 10, 1955.

27 In the District Court of the United States for the Eastern
District of Virginia at Richmond

[File endorsement omitted]

[Title omitted]

PLAINTIFFS MOTION TO REJECT PROOF OFFERED BY DEFENDANT—
Filed February 10, 1955

Plaintiff moves that the proof offered by defendant, in support of a contention that certain portions of some of the shipments on which charges are sought to be collected herein, were subject to an export rate from Pontiac, Michigan to Newport News, Virginia, be rejected and excluded by the Court, upon the following grounds:

1. The ultimate alleged exportation of such shipments was not in compliance with the applicable published tariffs in effect, namely, Central Freight Tariff No. 218-M.
2. The defendant voluntarily converted the shipments into domestic shipments before they were ultimately exported.
3. The articles left the possession of the carrier and were transported to other domestic points, and were stored and reboxed by a private contractor at various storage places, prior to being exported.
4. The articles were not exported from Newport News, Virginia, but from Pacific Coast points, to which the tariffs in effect had no application.
5. The articles ultimately exported were not the identical articles as originally consigned from Pontiac, Michigan.
6. Exportation did not take place within any reasonable time after delivery at Newport News, Virginia, under the circumstances.
7. Defendant enjoyed other export rates from the Pacific Coast points to India.

THE CHESAPEAKE AND OHIO RAILWAY COMPANY
By: MEADE T. SPICER, JR., Its Attorney.
Address: 1103 Mutual Building,
Richmond, Virginia.

28 In the United States District Court for the Eastern District of Virginia, at Richmond

[File endorsement omitted]

[Title omitted]

FINDINGS OF FACT—February 10, 1955

The Facts are as set out in the filed Stipulation of Facts; the plaintiff's account annexed to the Bill of Complaint; the Exhibits filed, and the proof submitted at the hearing, showing that the amount of transportation charges unpaid and owing to the plaintiff under the published domestic freight tariff in effect, for the transportation services rendered as alleged by the plaintiff, is Nine Thousand Five Hundred and Seventy-One Dollars and Thirty-Six Cents (\$9,571.36).

Conclusions of Law

The proof tendered by the defendant to the effect that after the shipments involved in the movement from Pontiac, Michigan, had been delivered to the defendant at Newport News, Virginia, some of such shipments or portions thereof were exported from ports other than Newport News, does not, under the tariffs in effect, cause the export freight rates to apply to such movement, and hence the only rate properly applicable thereto, is the domestic rate.

STERLING HUTCHESON,
United States District Judge.

Date: February 10, 1955.

29-33 In the District Court of the United States for the Eastern District of Virginia, at Richmond

[File endorsement omitted]

[Title omitted]

THE CHESAPEAKE AND OHIO RAILWAY COMPANY, PLAINTIFF

UNITED STATES, DEFENDANT

ORDER—February 10, 1955

This day came the parties, by their respective attorneys, and filed a signed Stipulation of Facts. The defendants offered to present proof of the facts contained in Exhibit No. 1 attached to said

Stipulation of Facts, and thereupon the plaintiff filed its motion in writing to reject and exclude the said proof offered by the defendant, and also presented oral testimony of witnesses in support of its Bill of Complaint and of its said motion;

Whereupon, the Court having maturely considered the Stipulation of Facts, and the pleadings and evidence, including the Exhibits and the oral testimony presented, and the arguments of counsel, and being of opinion that the plaintiff's motion to reject the proof tendered by the defendant should be sustained, doth sustain said motion and doth reject and exclude such proof:

No further evidence or defenses being presented, and the Court being of opinion that the plaintiff is entitled to recover for transportation charges in the amount set forth in the account attached to its Bill of Complaint, namely, \$9,657.69, subject to an admitted credit of \$86.33. *It Is Therefore Considered by the Court*, that the plaintiff do recover of the defendant, the United States, the sum of Nine Thousand Five Hundred and Seventy One Dollars and Thirty-Six Cents (\$9,571.36).

STERLING HUTCHESON,
United States District Judge.

Date: February 10, 1955.

I ask for this:

MEADE T. SPICER, JR., p. q.

I have seen and object to this:

R. R. RYDER, p. d.

34 Clerk's Certificate to foregoing transcript omitted in printing.

35 In the District Court of the United States for the Eastern District of Virginia, Richmond Division

Civil Action No. 1477

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

v.

UNITED STATES OF AMERICA

TRANSCRIPT OF TESTIMONY

Before Honorable Sterling Hutcheson, United States District Judge
February 10, 1955

APPEARANCES:

Messrs. Leake & Spicer, by Meade T. Spicer, Esq., For the Plaintiff.

Richard R. Ryder, Esq., Assistant United States Attorney, For the Defendant.

36 OPENING STATEMENT OF COURT AND COUNSEL

Mr. RYDER: We have prepared a stipulation of facts in the case and have attached to that stipulation two exhibits, Exhibit A and Exhibit 1.

Mr. SPICER: Your Honor, we have made several changes in the last few days, trying to agree on a stipulation, and finally got something yesterday afternoon which, I think, covers the situation. We desire to put on a tariff witness to make some explanation of the tariff and another accounting witness to testify as to the amount we claim to be due.

The COURT: Very well.

Mr. SPICER: I do want to say that we have had several conferences, but recently we have had two conferences about this exhibit, in which certain information came out. As I understand, this exhibit is not offered as the proof itself of what happened, but offered as the basis of proof to indicate the nature of the proof.

Mr. RYDER: As we informed Your Honor the other day, it would take a long time to present it in detail, and as far as Plaintiff is concerned, we thought we would try to have something in a
37 legal way to present to Your Honor without having proof at this time. If Your Honor rules that it is competent evidence and should be received, we have it; and if Your Honor says that it will not affect the legal proposition, there is no need to go into it. This is the same principle . . .

The COURT: So the only question for determination at this time is whether the ultimate exportation changes the tariffs as applied to the initial shipment to Newport News?

Mr. SPICER: Yes, sir. We asked for charges from Pontiac, Michigan to Newport News, and the case is similar in every respect to the case tried before Your Honor, one of the cases in which there was a stipulation by Counsel that this was frustrated traffic. The position was taken that Your Honor had not passed on a situation where the goods were exported eventually.

The COURT: After they left the possession of the carrier?

Mr. SPICER: Yes. Our position is that this would not be
38 sufficient to change the rate and make the exportation rate applicable.

Mr. RYDER: We are now offering to prove the facts set forth in Exhibit 1. Those facts in this column show what happened to the goods shipped under the bill of lading referred to in this suit.

The COURT: As I understand, the government is offering at this time to prove that certain portions of these shipments, after having been diverted from Newport News, and after having left the possession of the carrier, were ultimately exported from some other port?

Mr. SPICER: Yes, and I prepared a motion in line to bring our

objection to that proof. We are objecting to your receiving that evidence and ask that it be excluded from these papers. I think after Your Honor reads over the stipulation and if he wants to look at that sheet, I see no reason why Counsel should not enlighten you as to what the sheet is supposed to show without putting in the conversation of Counsel in evidence.

39 The COURT: All right, gentlemen, I think I understand the questions. What is your thought with regard to procedure?

Mr. SPICER: This comes upon motion to exclude evidence, and if Mr. Ryder wants an opportunity to show what the evidence purports to show, or whether it comes up on our motion to exclude.

The COURT: You made some reference to introducing the evidence of the tariff expert.

Mr. SPICER: Yes.

The COURT: Would it be in order to take that now?

Mr. SPICER: Yes.

The COURT: Would that be in support of your motion?

Mr. SPICER: Yes, sir.

40 C. JESSE ADAMS, a witness introduced on behalf of Chesapeake and Ohio Railway Company, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. SPICER:

Q. What is your occupation?

A. Chief of Revisions, Chesapeake and Ohio Railway Company.

Q. Will you explain in a little more detail what the nature of your duties are and what department you are in.

A. I am in the Accounting Department, and I am responsible for the application of the lawfully published tariff rates.

Q. Are you accustomed to dealing with published tariffs and classifications on behalf of the Chesapeake and Ohio Railway Company?

A. That comes within the jurisdiction of my position.

Q. And it is among the duties of the Accounting Department of the Chesapeake and Ohio Railway Company to see that freight charges are collected in accordance with the tariff and freight charges lawfully in effect?

41 A. That is correct.

Q. This is a suit for the collection of charges claimed to be due on certain shipments of freight chassis, seat cabs, and bodies that were consigned in December 1941 and January 1942 by the Yellow Coach and Truck Company from Pontiac, Michigan to Newport News, Virginia. The shipments were on government bills of lading,

they being intended for use by the government to be exported to the Republic of China. The stipulation shows that they were all delivered at Newport News, Virginia and unloaded on the piers, in December 1941 and January 1942.

The Plaintiff has now offered in evidence a certain document which purports to show what happened to these particular shipments, or some of them, none of them having been exported from Newport News upon delivery there by the Chesapeake and Ohio Railway Company. The explanation is that, by reason of the fall of the port of Rangoon early in 1942, they could not go to their destination because the route was via Rangoon to China.

This exhibit indicates that various articles included in these shipments were at a later time exported from a Pacific Coast point to Calcutta, India and shows that in each instance the goods, 42 after remaining at Newport News for three months or more, was shipped by the government on other bills of lading to storage points of the government located at Bloomfield, New Jersey and New Cumberland, Pennsylvania; there being in each instance, apparently, two movements from Newport News to these storage points, that is, first one storage point, and thence to another storage point; and thence to Wilmington, California, the shipments being ultimately consigned to Wilmington, California for export on dates, as indicated, beginning in June 1943, and subsequently exported from Wilmington, California, to India, beginning in the latter part of June 1943.

Have you examined this statement?

A. That is correct. I have examined this statement.

Q. Will you state, in the first place, what rates would be applicable to these shipments if unloaded at Newport News for delivery to the government without the data that is presented to you?

Mr. RYDER: You are asking him to state what rate would be applicable if the shipments left Newport News?

43 Mr. Spicer: What rate would be applicable to the shipments from Pontiac, Michigan. I am not asking for the exact amount, but the rate.

Mr. RYDER: We object.

The COURT: Objection is overruled.

Mr. RYDER: Might I note an exception to the rule? I think the question is one for the Court.

The COURT: I think that is true, but this gentleman is a rate expert.

Mr. RYDER: That is true, but it seems a question for determination by the Court. The set of facts should be taken before the Court and the published tariff and various facts contained in that published tariff, and the Court then should determine as a matter of law whether that tariff applies to that set of facts.

The COURT: I think you are correct in that statement. It is a question for determination by the Court, and the Court has already determined the applicable rate for goods shipped to Newport News and placed in export to be the export rate, and those not exported, those taken to Newport News and left in this country to be
44 the domestic rate, and the only remaining question is whether the export rate is applicable to that part of the shipment which was eventually exported from some other port. That is the only question.

Mr. SPICER: What I want to do is bring out the two which stand unpaid for, where they did not go out of the country, and by contrast, what the situation would be when they followed the course as shown in this exhibit.

The COURT: That is a question which the Court will have to determine, but this gentleman is a rate expert and is not expressing an opinion.

Mr. RYDER: No, he could not express an opinion as to what law governs the facts. That is for the Court to determine. It would seem to me that it would be the same as bringing in an expert on tort law and having him sit on the stand and tell what the law is.

Mr. SPICER: We have to start somewhere. All of us can't pick up a tariff and say, "Here it is."

Mr. RYDER: We understand that the Court previously decided that on the shipment from Pontiac, Michigan to Newport News, Virginia, if these shipments were for export, this
45 export rate was applicable if exported, but if not exported and the shipment stopped in Newport News, the domestic rate applies. That is the law that the Court has decided, but if you take the additional facts, that is, that the shipments were ultimately exported, as we offered to prove by Exhibit 1, then the question for the Court to determine is whether the export or domestic rate applies. I think this witness could testify as to what is the domestic tariff and what tariff controls the domestic rate, but I don't think he can testify as to which of those tariffs apply to this given set of circumstances.

The COURT: Ask your question, Mr. Spicer.

Mr. SPICER:

Q. All I want to get at is his construction. Mr. Adams, under the circumstances under which these shipments were consigned and transported from Pontiac, Michigan to Newport News, Virginia, and
46 had there been no subsequent movement of the goods shown from Newport News, what is the type of rate that would apply to these goods?

The COURT: Let's put it, "What type of rate would the Chesapeake and Ohio Railway Company apply to it?"

Mr. SPICER: All right, sir.

A. We would be governed by the provisions of the domestic tariff CFA-498.

Mr. SPICER:

Q. That is the tariff which shows the domestic rates?

A. Yes; that is the domestic rate.

The COURT: Mr. Ryder, do you object to the question and answer in that form?

Mr. RYDER: Yes.

The COURT: The Record will show that you objected and I overruled your objection.

Mr. SPICER:

Q. Assuming that some of these shipments took the course indicated by the work sheet, Exhibit 1, prepared by the General Accounting Office, what would be your construction, or, the construction of the Chesapeake and Ohio Railway Company, of the proper tariff to apply to such shipments?

Mr. RYDER: We object to his answering that.

The COURT: Objection overruled.

A. The domestic rate to Newport News in CFA Tariff 490-8 would apply.

Mr. SPICER:

Q. What rate would apply to the first movement from Newport News, as indicated on this top sheet, of some of the goods, under your tariff, for the goods which moved to Bloomfield, New Jersey?

Mr. RYDER: We object to his answering any question of that type. I thought this question had been decided.

The COURT: I understand that your objection applies to all of these questions.

A. The character of the movement from Newport News to Bloomfield, New Jersey, would be a domestic rate application.

Mr. SPICER:

Q. Bloomfield, New Jersey, is not on the Chesapeake and Ohio Railway?

A. No.

48 Q. So the movement there would not be a through route over the Chesapeake and Ohio lines, the movement from Newport News to Bloomfield, New Jersey?

A. The Chesapeake and Ohio would jointly handle this traffic with another line. The only line from Newport News is the Chesapeake and Ohio.

Q. But it would not in the course of that movement come back to the Chesapeake and Ohio Railway Company after it left it?

A. That is right. The final destination, Bloomfield, New Jersey, is on another line.

Q. You have stated that you would construe this situation, the export tariff rates, as not being applicable if the shipments took these various routes and went to these various points as shown on this exhibit?

A. That is correct. The export tariff to Newport News would not be applicable.

Q. Can you elaborate on that as to how you meant that answer?

A. Well, there is a restriction in the tariff CFA 218-M, ICC 3432.

49 Q. Is that the tariff showing the export rate, the export rates applicable to these shipments?

A. Yes, which is the tariff from Pontiac, Michigan to Newport News for export.

Q. If any export tariff was applicable to it, that would be the tariff into Newport News?

A. That is correct. The restriction is found in Item No. 23030, p. 333.

Mr. SPICER: Your Honor, that is in Exhibit A.

Q. That is what number?

A. Item 23030, and this restriction reads:

"Application of Export Rates to North Atlantic Seaboard Ports of Export" (Newport News being a North Atlantic seaboard port—I am interpolating that, that is not in the tariff).

"The rates names in this tariff, or as same may be amended, and designated as 'Export Rates' will apply only on traffic which does not leave the possession of the carrier, delivered by the Atlantic Port Terminal carriers direct to the steamer or steamer's dock upon arrival at the port or after storage or transit has been

50 accorded by the port carrier at the port under tariffs which permit the application of the export rates, and also on traffic delivered to the party entitled to receive it at the carriers' seaboard stations to which export rates apply, which traffic is handled direct from carriers' stations to steamship docks and on which required proof of exportation is given."

Q. Will you give your idea of the meaning of that provision?

A. Reading from the item quoted, the stipulation that traffic is handled direct from carriers' station to steamer's docks at the eastern seaboard stations, would mean that the carrier would have to deliver this over the pier or dock at Newport News to the steamship that would actually export the commodity.

Q. And proof of that fact would have to be given in order for that export tariff to apply?

A. That is correct, "on which required proof of exportation is given," and that relates to that port.

Q. What effect would the shipping of some of these goods
51 to Bloomfield, New Jersey, have, so far as the tariffs are concerned?

A. The movement from Newport News to Bloomfield, New Jersey, or any other inland point would prevent the application of this export tariff rate of 218-M.

Q. It would break the chain?

A. It would definitely be in violation of the tariff.

The Court: That is, upon the assumption that the goods have left the possession of the carrier in the meantime?

A. That is correct.

Mr. SPICER:

Q. And if these goods went to one or more other domestic points, the chain, so to speak, would be broken on the movement?

A. Any shipment other than over the piers at Newport News would prevent the export rate from applying.

Q. Does this tariff you speak of governing the movement from Pontiac, Michigan, to Newport News have any application to shipments that might be moved from Newport News to Pacific Coast points and there exported?

52 A. This tariff has no application on shipments being exported through any Pacific port and only applies to export through Atlantic seaboard ports.

Q. As indicated on the title page?

A. As indicated on the title page and in the Item No. 23030 I have read.

Q. And this tariff is only united in by the carriers that would be concerned in the movement from Pontiac, Michigan, to Newport News, and any carrier in further exportation?

A. This tariff would be confined to the controlling carriers, which would not include any Pacific Coast carrier.

Q. If the shipper in the first instance had desired the shipment to be exported from Pacific Coast points, this tariff would have no application?

A. If it were handled by rail carrier through the Pacific Coast ports, the tariff would have no application.

Q. This tariff has no application to any movement through the Pacific Coast, whether export or import?

A. If you permit me to make a statement, you may become involved in intercoastal tariffs.

53 Q. How long have you been engaged in tariff and transportation work for the Chesapeake and Ohio Railway Company?

A. Over 30 years.

Mr. RYDER: We would again like to object to all the testimony of this witness.

The COURT: I understand your objection applies to all of the testimony with regard to tariffs.

Mr. RYDER: Yes.

Mr. SPICER: I do want to state to the Court that we did have an agreement with Counsel that a tariff witness could be called by each side in the case.

The COURT: That is stated for the purpose of the Record?

Mr. SPICER: Yes.

The COURT: I have overruled the objection.

54 CROSS EXAMINATION.

By Mr. RYDER:

Q. All of the testimony you have given with respect to the application of this tariff and with respect to the application of this particular shipment from Newport News to Bloomfield, New Jersey, is that which the Chesapeake and Ohio Railway Company would apply; is that correct?

A. That is correct.

Q. The Chesapeake and Ohio Railway Company does not have any shipments that go from Newport News to Bloomfield?

A. Yes, sir.

Q. Do you have any lines that go to Bloomfield?

A. We get the movement from Newport News because we are the only carrier out of Newport News.

Q. Where would it go to another carrier?

A. At Potomac Yard.

Q. But the Chesapeake and Ohio has no line from Newport News to Bloomfield?

A. No.

Q. How about to New Cumberland, Pennsylvania?

55 A. That would be possible to haul over the Chesapeake and Ohio as an intermediate carrier.

Q. Suppose a shipment was made from Pontiac, Michigan

to Newport News, but suppose the shipment was held on the dock for a year's time and then exported out of Newport News, would this export tariff apply?

A. My opinion is that it would not then apply without another tariff permitting storage.

Q. So your opinion is that it has to be exported within a reasonable time?

A. That would be my understanding.

Q. Is it also your understanding that if they took a shipment from Pontiac, Michigan to Newport News and that shipment was subsequently diverted to Norfolk and shipped out of Norfolk, export out of Norfolk, that that tariff would not apply?

A. There are provisions at the port which permit exportation from either Norfolk or Newport News, and in that specific instance that would be a type of service available under published tariffs.

Q. How about Baltimore?

A. That would be another port, and any port outside of Newport News or the Norfolk area would take it out of that category
56 of Newport News.

Q. But it would not take it out of the category of the Atlantic Seaboard?

A. That is right, but the provisions of Item No. 23030 provide that it be applied at that port to a steamer or vessel.

Witness stood aside.

57 H. K. HAWTHORNE, JR., a witness introduced on behalf of the Chesapeake and Ohio Railway Company, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. SPICER:

Q. Mr. Hawthorne, you are employed by the Chesapeake and Ohio Railway Company, are you not?

A. Yes, sir.

Q. In what department?

A. In the Accounting Department.

Q. How long have you been employed in the Chesapeake and Ohio Railway Company's Accounting Department?

A. Something over forty years.

Q. Are you accustomed to handling records covering freight shipments, including bills of lading, freight bills and tariffs, and things of that kind?

A. Yes, sir.

Q. Was there prepared by you or under your supervision an

account to be attached to the bill of complaint when this suit was brought?

A. Yes.

58 Q. The papers indicate that the complaint in this action was filed on March 10, 1952, and there is attached to the complaint an account in which the total amount claimed was \$9,657.69; you may look at it. Was that prepared by you?

A. Yes, sir, that was prepared under my supervision.

Q. And that sets forth the particulars under which these charges were set up in this case?

A. That is right.

Q. Now, is there anything that the Chesapeake and Ohio Railway Company is now prepared to withdraw from that claim?

A. Yes, sir. There are two items that involve a divisional matter that we do not think should correctly be in this case, in the amount of \$86.33, which leaves the correct amount \$9571.36.

Q. Those figures represent the amount due now?

A. Yes, to my best information and belief.

Q. And were they calculated on the export rate or the domestic rate?

A. They were calculated under the domestic rate.

59 Q. Did you confer with the representative of the General Accounting Office in regard to the data shown on this Exhibit No. 1?

A. I did not understand the first part of your question.

Q. Did you confer with the representative of the Accounting Office at the time this Exhibit No. 1 was made available to the Chesapeake and Ohio Railway?

A. Yes, sir.

Q. Did you understand from him what this was?

A. I understood that it was a transcript of information taken from pertinent records lodged with the Department of Army and purporting to show the movement of these shipments to and from various storages and finally.

Q. This particular transcript was made by the General Accounting Office?

A. Yes.

Q. And does not include the records from which it was made?

A. No, sir.

Q. Who was this representative?

A. Mr. Levenstein, of the Special Reports Section.

60 Q. Did you confer with anyone else about it, or did anyone make a visit to you?

A. Mr. Fribourg of the Department of Justice talked with me about it.

Q. Did Mr. Jones confer with you?

A. Yes, he did. Mr. Jones did come to the office.

Q. From your conversations with the General Accounting Office, did that indicate to you what happened to these freight chassis after they left Newport News?

Mr. RYDER: We object to that question. The conference he is speaking about was a conference in an attempt to arrive at a stipulation of facts in this case. What the representative of the General Accounting Office might have said, that these records might have shown, or something of that nature, is immaterial, and I don't think this man can say what they might have said, or those records might have attempted to show. We have offered to prove that those records are correct and offered to prove what they show, and we don't think any evidence in an attempt to add an additional statement of facts is admissible.

61 Mr. SPICER: We avow that this is an intricate document which is not entirely self-explanatory, and this was brought down to Richmond and an explanation was brought out by the General Accounting Office to explain what it purported to represent, and at this conference Mr. Jones made an explanation and wanted us to agree to it as it was, or agree to what it showed. We declined to do that, but tried to work out some way in which the questions involved could be handled in as brief a manner as possible. He stated that the data from which it was taken would be comprised of a number of volumes of testimony, and he attempted to explain to us what it was, and I am simply asking Mr. Hawthorne to give us the benefit of such explanation, rather, to give the Court the benefit of such explanation as he made. There is nobody here from the General Accounting Office of the government.

The COURT: That is Exhibit 1?

Mr. SPICER: Yes.

The COURT: I am rather inclined to believe that it speaks for itself; however, for the purposes of the Record, proceed, and I
62 will determine later whether it should be considered or not.

Mr. SPICER:

Q. State, Mr. Hawthorne, what Mr. Jones indicated or stated happened to the freight chassis shipments after they left Newport News?

A. As near as I recall, Mr. Jones state that these shipments were billed out of Newport News to Bloomfield, New Jersey, for the purpose of placing on crating by the General Motors Corporation, at Bloomfield, and after this change was made and they were placed, they were then sent to New Cumberland for storage and held at that point until they found an overseas destination to which they wished to send the chassis. They were billed out in New

Cumberland some 18 months later and billed for transport to Wilmington, California for transport to Calcutta, India.

Q. Was there any separation of any part of the shipments?

A. Yes, these shipments at Newport News consisted of bodies, in addition to the chassis. Three of the shipments, according to his record, consisted of bodies, which were shipped to New Cumberland direct and later sent to some overseas destination from
63 storage.

Q. You mean, the bodies moved in a separate movement from the chassis?

A. Yes, sir.

Q. Was there a separate charge on the three shipments of bodies, or were they charged with the others?

A. No, I understand that these were the only three in this design.

Q. Did you examine the billing on some of these shipments billed by the Chesapeake and Ohio from Newport News?

A. Yes, sir.

Q. Did that indicate to whom the shipments were consigned at Bloomfield?

A. Yes, sir, General Motors Corporation.

Q. Did Mr. Jones say anything about the status of General Motors Corporation?

A. To the extent that they were acting as agents for the government in the reworking and recrating of the shipments.

Mr. RYDER: We would like to move the Court to strike all the evidence of this witness with respect to his testimony as to
64 what the representative of the General Accounting Office was purporting to say as to what this Exhibit 1 shows.

The Court: The worksheet, by itself, is not altogether self-explanatory in its construction, but I think with the stipulation of Counsel it is understandable, and I doubt if the testimony of Mr. Hawthorne is necessary to clarify it. However, I shall overrule the motion that his testimony be rejected.

Mr. SPICER: I would like to ask one more question, and it will be subject to the same objection.

The Court: All right.

Mr. SPICER:

Q. In the discussion had and examination of that exhibit, does it appear that separate bills of lading were issued after the goods were delivered at Newport News; in other words, did those shipments move on the same bill of lading from Pontiac, Michigan to Calcutta, India?

A. No, sir. There were separate bills of lading, and after it left

B-109040
Export Rates, Class or Co09040 C.A. 1477 C.O. Ry Co.
Class or Commodity, are in effect on Automobiles moving to ports

SHEET #1

INBOUND TO NEWPORT NEWS, VIRGINIA.		FIRST MOVEMENT BEYOND NEWPORT NEWS, VIRGINIA.		SECOND MOVEMENT		THIRD MOVEMENT		EXPORT		SHIP MANIFEST INFORMATION.			
		B-L	DATE	DESTINATION	B-L	DATE	DESTINATION	B-L	DATE	NAME OF SHIP	DESTINATION		
WQ 4495006	12-10-41	WQ 5330894	5-7-42	BLOOMFIELD MAN	WQ 522578C	578C	5-22-42	NEW CUMBERLAND PA	WQ 16892427	6-2-43	WILMINGTON CALIF.	LA 355	CALCUTTA INDIA
							426	"	"	6-25-43	"	LA 355	CALCUTTA INDIA
							427	"	"	6-25-43	"	LA 355	CALCUTTA INDIA
							426	"	"	6-25-43	"	LA 355	CALCUTTA INDIA
							427	"	"	6-25-43	"	LA 355	CALCUTTA INDIA
							426	"	"	6-25-43	"	LA 355	CALCUTTA INDIA
					5225775	5775	5-20-42	NEW CUMBERLAND PA	WQ 16892302	6-1-43	"	LA 347	CALCUTTA INDIA
							325	"	"	6-24-43	"	LA 355	"
					5225780	5780	5-22-42	NEW CUMBERLAND PA	WQ 16892427	6-2-43	"	LA 355	CALCUTTA INDIA
							426	"	"	6-25-43	"	LA 355	CALCUTTA INDIA
							427	"	"	6-25-43	"	LA 355	CALCUTTA INDIA
							426	"	"	6-25-43	"	LA 355	CALCUTTA INDIA
					5225759	5759	5-15-42	NEW CUMBERLAND PA	WQ 16892369	6-1-43	"	LA 347	CALCUTTA INDIA
							370	"	"	"	"	LA 355	"
					5225762	5762	5-15-42	NEW CUMBERLAND PA	WQ 16892375	"	"	LA 355	"
							376	"	"	"	"	LA 355	"
					5225759	5759	5-15-42	NEW CUMBERLAND PA	WQ 16892369	"	"	LA 355	"
							370	"	"	"	"	LA 355	"
					5225762	5762	5-15-42	NEW CUMBERLAND PA	WQ 16892375	"	"	LA 355	"
							376	"	"	"	"	LA 355	"
							305	"	"	"	"	LA 355	"
					5225762	25762	5-15-42	NEW CUMBERLAND PA	WQ 16892375	"	"	LA 355	"
							376	"	"	"	"	LA 355	"
							375	"	"	"	"	LA 355	"
							376	"	"	"	"	LA 355	"
							376	"	"	"	"	LA 355	"
					5225751	225751	5-16-42	NEW CUMBERLAND PA	WQ 16892403	6-2-43	"	LA 355	"
							404	"	"	"	"	LA 355	"
					5225753	225753	5-16-42	NEW CUMBERLAND PA	WQ 16892360	6-1-43	"	LA 355	"
							359	"	"	6-24-43	"	LA 355	"
					5225751	225751	5-16-42	NEW CUMBERLAND PA	WQ 16892403	6-2-43	"	LA 355	"
							404	"	"	6-25-43	"	LA 355	"
					5225750	225750	5-15-42	NEW CUMBERLAND PA	WQ 16892356	6-1-43	"	LA 355	CALCUTTA INDIA
							353	"	"	6-25-43	"	LA 347	CALCUTTA INDIA
					5225752	225752	5-16-42	NEW CUMBERLAND PA	WQ 16892358	"	"	LA 355	"
							357	"	"	"	"	LA 356	"
					5225750	225750	5-15-42	NEW CUMBERLAND PA	WQ 16892361	"	"	LA 355	"
							353	"	"	6-25-43	"	LA 347	CALCUTTA INDIA
					5225752	225752	5-16-42	NEW CUMBERLAND PA	WQ 16892355	"	"	LA 347	CALCUTTA INDIA
							307	"	"	"	"	LA 347	"
							358	"	"	6-24-43	"	LA 347	CALCUTTA INDIA
							357	"	"	6-24-43	"	LA 347	CALCUTTA INDIA
							355	"	"	6-24-43	"	LA 347	CALCUTTA INDIA
							355	"	"	6-24-43	"	LA 347	CALCUTTA INDIA
							357	"	"	6-24-43	"	LA 347	CALCUTTA INDIA
					5225751	225751	5-16-42	NEW CUMBERLAND PA	WQ 16892403	6-2-43	"	LA 355	"
							404	"	"	"	"	LA 355	"

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Newport News and left the Chesapeake and Ohio separate bills of lading were issued covering each of the movements.

65 Q. Those bills of lading were not in the possession of the Chesapeake and Ohio Railway Company?

A. No, sir.

Q. But the Chesapeake and Ohio Railway Company was paid its part of the charges on the movement it made from Newport News to Bloomfield, New Jersey?

A. Yes.

Q. Or New Cumberland, whichever place they went?

A. Yes.

Q. And there was no controversy about those charges?

A. No, sir; not as far as I know.

Q. And they were collected on domestic freight rates?

A. Yes, as far as our records show, they were.

Mr. RYDER: I have no questions.

Witness stood aside.

66 CLOSING STATEMENTS OF COURT AND COUNSEL

Mr. SPICER: I think that is all of the evidence.

The COURT: Do you have any evidence, Mr. Ryder?

Mr. RYDER: Nothing beyond what we offered to prove, as set forth in Exhibit 1.

Mr. SPICER: I would like to have the statement in the Record that there is no representative from the General Accounting Office of the government to make any explanation of the records, which made it necessary for me to call for the explanation in the evidence I have just presented.

The COURT: Is there anything further for the Record, gentlemen?

Mr. SPICER: I would like to make a statement that we have a complete copy of the Tariff 218-M, excerpts of which are already in the stipulation. We have a copy to exhibit, and we are not able to say where there are any other copies that are available, but we have it available for inspection and examination by the Court later.

The COURT: You have nothing further for the Record?

Mr. SPICER: No, sir.

67 The COURT: Do you desire, Mr. Ryder, to be heard in opposition to this motion?

Mr. RYDER: No, sir, except we do not agree to the motion and object to it.

The COURT: You object to the motion?

Mr. RYDER: Yes.

The COURT: Gentlemen, as I understood from your statements and from the Stipulation and exhibits, as well as statement of the Counsel, the facts, briefly, are these:

The shipment involved was from Pontiac, Michigan, to Newport News, Virginia, destined for export to Rangoon. Upon arrival at the port of Newport News, the government, due to the fall of Rangoon, diverted, or caused to be diverted, this shipment, which was reshipped to other points in the United States. The goods left the possession of the carrier, the Chesapeake and Ohio Railway Company, without having been exported from Newport News, the Atlantic Seaboard port of proposed exportation. Subsequently, after the goods had left the possession of the carrier, the goods, or
 68 a part of them, were exported from other ports in the United States, but not from Newport News.

The question proposed is whether the export rate is applicable from Pontiac, Michigan, to Newport News, Virginia, and from the stipulations and exhibits and statements of Counsel, independently of the testimony which has been offered, it appears clear to me that the export rate does not apply under said circumstances from Pontiac, Michigan, to Newport News, Virginia; and therefore, proof of ultimate exportation from other ports, as indicated by Exhibit 1, would not change the applicable tariff, which should be the domestic rate from Pontiac, Michigan, to Newport News, Virginia. Therefore, the motion of the Plaintiff to reject proof of ultimate exportation of the shipment will be granted, and the offer of the government, as set out in paragraph four of the Stipulation, will be denied.

Do you gentlemen have any comment concerning the procedure?

Mr. RYDER: The only other thing, then, is to enter judgment order.
 69

The COURT: In the amount set forth?

Mr. RYDER: Yes.

The COURT: Could not an order be entered showing the Court's rejection of the proof?

Mr. SPICER: Yes, and I have presented an order which reads that the Defendant, having no further defense to present, it is considered that the Plaintiff recover the amount as stated.

The COURT: Do you have any contrary suggestion, Mr. Ryder?

Mr. RYDER: I would like to suggest to the Court that the order be changed to read, in the third line, that the Defendant offered to present proof of the ultimate export in accordance with Exhibit 1, rather than a general statement such as this is.

Mr. SPICER: I think that is proper. And I also said "concerning facts," but I could substitute "by pleadings and testimony."

The COURT: "As set forth by Stipulation and Exhibit 1," etc., and I think it would be a good idea for the amount to appear in
 70 the record.

Reporter's Certificate to foregoing transcript omitted in printing.

EXHIBIT "A"

FREIGHT TARIFF (1) 218-1.

Cancels

FREIGHT TARIFF 1 218-1.

Joint, Local, Proportional, Coastwise, Intercoastal, and Export Rates

Applying on
Commodities

From Stations in Illinois, Indiana, Iowa, Kentucky, Michigan, Missouri, Ohio, Pennsylvania, West Virginia, Wisconsin.

Named on pages 24 to 102, inclusive.

To Albany, N. Y., Baltimore, Md., Boston, Mass., New York, N. Y., Norfolk, Va., Philadelphia, Pa.

And other Eastern Points in the United States as provided in Item No. 5.

Including basis for rates to United States Ports for Coastwise and Inter-Coastal traffic as provided in Section 4, and to Canadian Ports for Export and Forwarding as provided in Section 5.

71a Item No. 23030

* * * * *

APPLICATION OF EXPORT RATES TO NORTH ATLANTIC SEABOARD PORTS
OF EXPORT

The rates named in this tariff, or as same may be amended, and designated as "Export Rates" will apply only on traffic which does not leave the possession of the carrier, delivered by the Atlantic Port Terminal carriers direct to the steamer or steamer's dock upon arrival at the port or after storage or transit has been accorded by the port carrier at the port under tariffs which permit the application of the export rates, and also on traffic delivered to the party entitled to receive it at the carrier's seaboard stations to which export rates apply, which traffic is handled direct from carriers' stations to steamship docks and on which required proof of exportation is given. (C. F. A. Inf. 8179, 13607)

(Here follows Exhibit 1, folio 72)

73 Proceedings in the United States Court of Appeals for the
Fourth Circuit

No. 6998

UNITED STATES OF AMERICA, APPELLANT,

versus

THE CHESAPEAKE AND OHIO RAILWAY COMPANY, APPELLEE

Appeal from the United States District Court for the Eastern
District of Virginia, at Richmond

ARGUMENT OF CAUSE—June 15, 1955

June 15, 1955, (June term, 1955) cause came on to be heard before Parker, Chief Judge, and Soper and Dobie, Circuit Judges, and was argued by counsel and submitted.

74 United States Court of Appeals for the Fourth Circuit

No. 6998

UNITED STATES OF AMERICA, APPELLANT,

versus

THE CHESAPEAKE AND OHIO RAILWAY COMPANY, APPELLEE

Appeal from the United States District Court for the Eastern
District of Virginia, at Richmond

Argued June 15, 1955

Before PARKER, Chief Judge, and SOPER and DOBIE, Circuit Judges.

Alan S. Rosenthal, Attorney, Department of Justice, (Warren E. Burger, Assistant Attorney General; L. S. Parsons, Jr., U. S. Attorney, and Melvin Richter, Attorney, Department of Justice, on brief) for Appellant, and Meade T. Spicer, Jr., (Walter Leake on brief) for Appellee

OPINION—July 14, 1955

PER CURIAM:

75 This is another case, like *United States v. Chesapeake & Ohio R. Co.*, 4 Cir. 215 F. 2d 213, where the only question involved is whether the export or the domestic freight rate

is properly applicable to a shipment where there was an intention to export at the point of origin but where this intention was abandoned when the shipment reached the port from which exportation was to be made, so that what started out as a shipment for export was converted by the shipper into a domestic shipment. The only difference between this and the former case is that here the goods, after being held at Newport News for more than three months, were shipped by rail to storage centers in Pennsylvania and New Jersey, and, after being held there for more than a year, were shipped across the continent to Wilmington, California, whence they were exported to Calcutta, India. It appears, here, just as clearly as in the former case, that the intention to export to China was abandoned and that the movement which began at Pontiac, Michigan, as an export was converted by the shipper into a domestic shipment. The case, we think, is clearly governed by our former decision and nothing need be added to what was there said.

Appellant insists that there is a difference with respect to its motion to stay proceedings and refer the case to the Interstate Commerce Commission, in that that motion was made in the court below in this case but not in the former one. It is clear, however, that the motion was properly denied. The question was not the reasonableness of rates, which everyone conceded to be reasonable, but which rate was applicable to the shipment under the circumstances of the case, a question which the court was competent to decide. There were before the court no such administrative questions as were involved in *United States v. Kansas City Sou. R. Co.*, 8 Cir. 217 F. 2d 763, upon which appellant relies. Furthermore, as we pointed out in the prior case, it would not have been a reasonable exercise of discretion to stay proceedings pending action by the Commission where all parties before the court were barred by limitations from asking such action. The court has power to stay proceedings before it pending action by the Commission, but not to refer to the Commission proceedings which the Commission is without power to entertain.

Affirmed.

77-79 United States Court of Appeals for the Fourth Circuit

No. 6998

UNITED STATES OF AMERICA, APPELLANT,

vs.

THE CHESAPEAKE AND OHIO RAILWAY COMPANY, APPELLEE

JUDGMENT—July 14, 1955

APPEAL FROM the United States District Court for the Eastern District of Virginia.

THIS CAUSE came on to be heard on the record from the United States District Court for the Eastern District of Virginia, and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from, in this cause, be, and the same is hereby, affirmed.

JOHN J. PARKER,

Chief Judge, Fourth Circuit.

MORRIS A. SOPER,

United States Circuit Judge.

ARMISTEAD M. DOBIE,

United States Circuit Judge.

August 15, 1955, mandate issued and transmitted to the Clerk of the United States District Court at Richmond, Virginia.

August 15, 1955, record on appeal and exhibits A and #1 returned to the Clerk of the District Court at Richmond, Virginia.

November 22, 1955, record on appeal and exhibits A and #1 received from the Clerk of the District Court.

80 Clerk's Certificate to foregoing transcript omitted in printing.

81 Supreme Court of the United States

[Title omitted]

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of counsel for petitioner(s),

IT IS ORDERED that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including December 11th, 1955.

EARL WARREN,

Chief Justice of the United States.

Dated this 7th day of October, 1955.

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed January 23, 1956

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit is granted and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.